

U.S. DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVENUE
N.W. WASHINGTON, D.C. 20530
CIVIL DIVISION

Wessie Sims, Plaintiff
vs
City of Philadelphia et al.

Civil Action
No. 12_5486
Date: July 29, 2015

Defendants

Notice of Certification by the Court
28U.S.C.2403

To United States Department of Justice

Plaintiff filed notice of Constitutional Question Rule 5.1. Constitutional challenge to a Statue on 5/15/2015.

- (a) Certification by the Court.
The court must under 28U.S.C.2403, certify to the appropriate attorney general that a statue has been questioned.
- (b) Wherein the constitutionality of any act of congress affecting the public interest is drawn in question, the court shall certify such fact to the attorney general and shall permit the United States to intervene for presentation of evidence, if evidence is admissible in the case and for argument on the question of constitutionality.

June 25, 1948, C.646, 62 Stat. 971; August 12, 1976,
Pub.L.94-381, 5, 90 , Stat. 1120

1976 Acts. Senate Report No. 94 204,
1976 U.S. Code Cong. And Adm. Newsp. 1988

Amendments

1976 Amendments Catchline. Pub.L.
94 381,5(b) added or a State
Following United States

1. Where the District Court closed the case on 2/6/2013, Plaintiff continued to file motions and reconsiderations with the District Court to prevent abandonments and voluntary relinquishment of all rights.
2. The Court sua sponte dismissed Plaintiffs claims against the individual defendants without notice or an opportunity to be heard.
3. Federal Rule 2.6: Ensuring the right to be heard. The right to be heard is an essential component of a fair and impartial system of justice:

Plaintiff claims procedural violations
constitutional law 318 guarantee of due process.

1. On Ground of Lack of Hearing:
2. 5U.S.C.554, 556,706
3. The scope of review is set forth in 5.U.S.C 706

King V. Hampton 327, F. Supp. 714U.S.
District Court April 22, (1971)

4. Plaintiff request review of Fed. R.Civil p.79 civil docket and:
5. Record on appeal Fed.R.app.p. 10(a)
Appeal case no. 13_1398
United States Court of Appeals 3d.Circuit:
6. Final appealable order or judgment one that disposes of all issues and all parties in the case, and which sets at rest cause of action between parties
7. Final Decision Rule 28U.S.C.A.1291.
8. Code de procedure civil:
9. That part of the Code Napoleon which regulates the system of Courts, their organization, civil procedure, special and extraordinary remedies and the execution of judgments.
10. This case is without Final Judgment.

Memorandum of Law

- (a) The city filed a motion to dismiss the Complaint pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be Granted.
 - (b) Plaintiff stated a claim denied due process
XIV sect. 1 Complaint Filed 9/25/12
 - (c) The Court granted the motion and dismissed the Complaint without a hearing.
 - (d) In re Rockefeller Ctr. Props.
Inc.sec.Litig 311, F. 3d. 198
215_16 3rd Cir. 2002
- A. The Court Held:
Dismissal under Rule 12(b)(6) is not appropriate unless it appears beyond doubt that plaintiff can prove not set of facts in support of his claims which would entitle him to relief.

Haines v. Kerner Et Al. Per Curium
U.S. Court of Appeals Seventh Circuit
No. 70_5025 argued Dec. 6 (1971) decided
Jan 13, (1972)

Holding the pro_se complaint should not have been

- (1.) Dismissed without affording the opportunity to present evidence on his claims 427.
F.2d.71 and:
- (2.) The Court conclude that the pro-se petition is entitled to an opportunity to offer proof:

Memorandum of Law

Phillips v. County of Allegheny
515 F.3dat 228 3d. Cir. (2008)

The Court held pursuant to fed. Rule Civ. P.

- (3.) 12(b)(6) 28U.S.C.A.
Unless the court finds that Amendment would be futile, the court must inform plaintiff he has leave to amend the complaint with a set period of time.
- (4.) In the event the complaint fails to state a claim, the District Court must give plaintiff the opportunity to amend the complaint.

Shane v. Fauver 213,F.3d.113
3d.Cir.(2000).

- (5.) Because the District Court did not follow these dictates the 3d.cir. reversed in part and remand.

- (a) There was no trial: Courts must provide by Rule for scheduling trials Fed.R.40 amended April 30, 2007 effective Dec. 1, 2007.
- (b) Defendants never answered the Complaint nor filed a responsive pleading.
- (c) Fed. Rule 45 subpoena issuing court:
- (d) The subpoena never issued.

Under the law a judge shall accord to every

- 4. Person who has a legal interest in a proceeding or that person's lawyer the right to be heard according to the law.
- 5. Notice of appeal was filed by counsel February 11, 2013, in the United States Court of Appeal for the Third Circuit Case no. 13_1398
- 6. The appeals Court States clearly in its opinion it had no decision to review. Final decision Rule:
- 7. Appeals to Federal Courts of Appeals from U.S. District Courts must be from final decisions of District Courts 28U.S.C.A. 1291. In other words, the Court of Appeals lack jurisdiction over non-final judgments.
- 8. The District Court entered an initial judgment:

A. In Crawford v. Andrew Systems Inc.
119 F.3d.925, 11th Cir. (1997).

The Court held: that the District Courts initial judgment was unauthorized. see id.at 1154
Holding the District Court has no authority to grant a judgment notwithstanding a verdict.

- B. The Court States when a Court of Appeals reverses a judgment on the ground that it was unauthorized, the case is left without a judgment until the District Court enters one that is authorized by the Law.
 - C. The Court note that until the March 29, (1995) judgment was entered on remand, no judgment existed.
- (a) A judgment is required to be set forth in writing in a separate document, and entered on the Docket, and until each requirement was met, the judgment was not deemed to have been entered and the time for filing an appeal would not begin to run.
 - (b) Rule 58 has provided that a judgment is effective only when set forth on a separate document and entered as provided in rule 79(a).
 - (c) Required by rule 58(a)(1) a rule 60 begin to run after expiration of 150 days from entry of the judgment in the Civil Docket as required by rule 79(a).

- (d) Rule 58(a) preserves the core of the separate document requirement both for the initial judgment, and any amended judgment.

Contents of judgment document must clearly state which parties are entitled to what relief

Constitutional Law 4050.

There are three possible standards that can be used to determine whether state action shocked the conscience as a required element of due process claims:

1. Deliberate indifference.
 2. Gross negligence, or arbitrariness that indeed shocks the conscience.
 3. Or intent to cause harm.
- A. Supreme Court: The behavior of the government shocks the conscience of a reasonable observer.

County of Sacramento v. Lewis
523, U.S. 833, 118, Supreme ct. 1708, 140,
L.Ed. 2d. 1043, (1998).

- B. Failure to accord the parties a full right to be heard according to the law in violations of Canon 3, (a)(4) of the Code of Conduct for U.S. Judges.

Preamble:

- C. This code shall constitute the canon of judicial ethics referenced in Article V. Section 17(b) of the Pennsylvania Constitution.
- (1.) The Sherman Amendment to the Bill, which became the Civil Rights Act of (1871) 12 stat. 13 the precursor of (1983) The Amendment would have held a municipal corporation liable for damage done to the person or property of its inhabitants by private persons Riotously and tumultuously assembled. Cong. Glob, 42d cong. 1st sess, 749 (1871).
 - (2.) A cause of action was given to persons injured by any persons Riotously and tumultuously assembled together with intent to deprive any person of any right conferred upon him by the Constitution and laws of the United States. April 18, (1871). The first conference committee completed its work on H.R. 320. The conference committee draft of the Sherman Amendment 17 stat 13.
 - (3.) It is when execution of a governments policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy inflicts the injury that the government as an entity is responsible under (1983). This case involves official policy as the moving force of the constitutional violation.

1. The policy maker is responsible for the policy or through acquiescence for the custom as stated by the Supreme Court in *Jett v. Dallas Independent School District*, U.S. 109, S. ct. 2702 2723, 105, L.Ed. 598, (1989).
2. Municipal policy inflicts the injury.
42U.S.C.A. 1983.
3. Local governing bodies and local officials sued in their official capacities can be sued directly under 1983 for monetary, declaratory and injunctive relief in those situations the policy statement, ordinance, regulation or decision officially adopted or promulgated by those who edicts or acts may fairly be said to represent official policy.
4. Municipalities have no reliance interest that would support an absolute immunity pp. 699_700. Decision maker established a policy or well settled custom.
5. The policy maker was deliberately indifferent to the need. The municipal action was taken with deliberate indifference to its known or obvious consequences. The policy maker has failed to act affirmatively at all. The need to take some action to control its employees.

Standard of Review

42 U.S.C. 1983 provides a federal cause of action for a plaintiff whose constitutional rights have been violated by a person acting under color of state law. *Natale v. Camden County Corr. Facility* 318 F.3d.575.580 81 3d. Cir. (2003).

**A municipality is liable under Section 1983, where the municipality's policy or custom caused the alleged Constitutional injury.
Monell 436 U.S. at 694, (1978).**

Civil Rights 13, 42U.S.C.A.1983

Where the Defendants acted under Color of a Statue Ordinance, regulation custom or usage of state or territory and deprived plaintiff of a right, privilege or immunity secured by the constitution and laws of the United States are essential elements of a claim under section of civil rights act making one who, acting under color of state law, subjects any citizen to deprivation of any rights, privileges or immunities secured by the Federal Constitution and laws of the United States liable to injured party in action at law. The policy caused a constitutional violation by employees.

Certificate of Service

Civil Action
No. 12_5486
Date: July 29, 2015

The undersigned hereby certify that a true and correct copy of notice of certification by the court 28U.S.C.2403 and memorandum of law was served by certified mail return receipt requested on July 29, 2015 to Office of the Clerk for United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, PA 19106

Also, a true and correct copy of Rule 5.1
Constitutional challenge to statute dated 5/15/2015
Was served along with 28U.S.C.2403 certification by the Court.

All correspondence to:
Attorney of Record
Plaintiff's Agent
Sharon N. Harvey, Esq.
By email address.

Mailed First Class
United States mail postage pre-paid on July 29, 2015 to

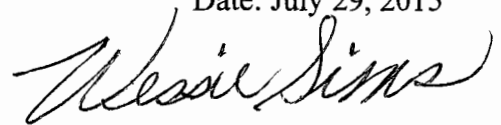
Name: Craig Straw, Esq.
Law Department
14th Floor
City of Philadelphia
1515 Arch Street
Philadelphia, PA 19102

By Weslie Sims

Conclusion

For all of the foregoing reasons plaintiff respectfully request the U.S. Department of Justice review her Constitutional Claims and laws of the United States.

Respectfully Submitted
Wessie Sims pro_se
4925 W. Stiles Street
Philadelphia, PA 19131
Date: July 29, 2015

A handwritten signature in black ink, appearing to read "Wessie Sims", written in a cursive style.

Sumner
W. Stiles St.
Philadelphia, P.A.
19131

U.S.M.S.
X-RAY

Office of the Clerk
For United States District Court
For the Eastern District of Pennsylvania
601 Market Street

Philadelphia, P.A.
19106.

